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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reported

April 16, 2007

\+ CRL.M.C. 2273/2005

DINESH YADAV ..... Petitioner
Through Mr. Anurag Jain, Advocate

versus

C.B.I. ..... Respondent
Through Mr. Shashank Singh for CBI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporters or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

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MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. In this petition, the FIR and criminal proceedings in which the petitioner has been named as accused No. 4, has been questioned. The petitioner seeks a quashing order on the ground that taken as a whole, neither the First Information Report nor the materials or the charge-sheet make out a case against him and that continuing the criminal proceedings in these circumstances would be prejudicial to him.

2. Mr. Anurag Jain, learned counsel for the petitioner contended firstly that the petitioner was never named in the First Information Report. The FIR had alleged that the accused had committed offences punishable under Section 420/467/471 IPC read with Section 13 (1) (d) of the Prevention of Corruption Act. It was alleged that during the relevant time, sometime in 1997-98, one M/s Vijay Kumar & Company was allotted work order by the then Executive Engineer, one Mr. Ahmed Syeed with dense carpeting of the MB Road. The said M/s Vijay & Company and another concern had submitted tenders; the work was allotted to M/s Vijay & Company on account of the lower rates of the work quoted. The whole work order was estimated to Rs. 4,26,526/- but the approval was restricted to Rs. 4 lakhs. It was alleged that as per the agreement, the work had to be executed within the parameters of instructions issued by the MCD. The contractor was to procure fresh supply of bulk Bitumen from Bharat Petroleum or Indian Oil Corporation or Hindustan Petroleum as approved by the Engineer-in-Chief of the MCD.

3. The allegations levelled were that the accused concern had a Hot Mix Plant somewhere in Ghaziabad and that certain invoices said to have been issued by IOC, Mathura were furnished by the contractor. It was alleged that the invoices were fraudulent and not genuine. After lodging of the FIR, investigations were conducted and the petitioner, who was not initially named as an accused was subsequently shown in the charge-sheet and recommended for trial as accused No.4.

4. Learned counsel urged that there is absolutely no material on record

suggestive of any role, much less culpable role played by the petitioner in the so-called commission of the offence or any conspiracy in that regard. He urged that he had no connection with the invoice tendered and relied upon by the accused concern and that the role was primarily attributed to other accused persons. It was also urged that the petitioner had joined MCD on 3rd August, 1998 whereas the allegations pertained to a previous period commencing in July, 1998.

5. Learned counsel for the petitioner urged that the mere filing of the charge-sheet by itself did not necessarily mean that a case had been made out and that the Court was entitled, by virtue of Section 482 of the Code, to examine the matter and conclude independently whether the criminal proceedings were maintainable. He relied upon the judgment reported as *Ashok Chaturvedi & Ors. Vs. Sheetul H. Chanchani & Ors.* 1998 SCC Crl. 1704.

6. Learned counsel for the respondent submitted that after the filing of the charge-sheet, this Court ought not to entertain the proceedings, as examining the rival contentions would amount to short-circuiting the process and pre-judging the case on its merits. It was urged that even though the petitioner was not named in the FIR originally, yet, on the basis of the investigations and materials gathered subsequently, his role became apparent and as a consequence, his name was included in the charge-sheet.

7. Learned counsel submitted that there is evidence to show that the petitioner, who was expected to supervise ten per cent of the total work, had deliberately overlooked the conditions contained in the work order and that also he had allegedly signed the gate passes of the Hot Mix Plant and other materials

authenticating the entries made initially by the Junior Engineer and the Assistant Engineer. Similar authentication of documents of the Accountant and UDC were made by him on 25.08.98, without satisfying that the work order conditions had not been fulfilled by the contractor.

8. Learned counsel submitted that the petitioner did not even verify as to whether any recommendatory letter was issued by the MCD to the IOC Division Marketing office, Delhi.

9. The factual narrative would show that when the FIR was lodged initially, the petitioner was not arrayed as accused. The allegations pertained to improper lodging of documents which were allegedly forged and fabricated and the use of Bitumen which is said to have been never issued by IOC. Though counsel for the petitioner is right in asserting that the Court, in exercising its jurisdiction under Section 482 is un-inhibited from considering the materials in totality and conclude even at the stage of filing of the charge-sheet whether the criminal proceedings ought to be quashed, nevertheless, such an exercise has to be done circumspectly and with caution. The rule enunciated by the Supreme Court in *Bhajan Lal*'s case and several other decisions is that the Court is empowered to exercise its inherent, and exceptional jurisdiction to further the ends of justice if it is satisfied that read as a whole, the First Information Report as well as the materials on record do not make out ingredients of the offence or offences in question. The other grounds are illegality and *mala fides*.

10. The factual narrative contained in the preceding paragraphs of this order, in my opinion, shows that there is some material on the basis of which charge-

sheet was filed. This is not a case where there is no material for this Court to conclude that the petitioner cannot be proceeded with. The role attributed to the petitioner pertained to his alleged acts of omission and commission in the supervision of performance of the contract by the concern. I am, therefore, satisfied that no case for interference is made out under Section 482. It is made clear that the observations in this order were only for the purpose of deciding whether quashing of the proceedings were warranted and not on the merits of the case. All rights and contentions of the parties are kept open.

The petition is accordingly dismissed.

S.RAVINDRA BHAT, J

APRIL 16, 2007
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